

IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP. No.580 of 2001

&

CWP No. 608 of 2001.

Judgment reserved on:20.6.2007

Date of Decision: July 5, 2007

1. CWPNo. 580/01.

State of H.P. Petitioner

Versus.

Seema Bawa ...Respondent.

2. CWP No. 608/01

State of H.P. ... Petitioner.

Versus.

Bandana Vaidya ... Respondent.

Coram:

The Hon'ble Mr. Justice Deepak Gupta, A.C.J.

The Hon'ble Mr. Justice V.K.Ahuja, J.

Whether approved for reporting?

For the Petitioner(s): Mr. M.S.Chandel, Advocate General
with Mr.R.M. R.M.Bisht, Dy. Advocate
General.

For the Respondent(s): M/s Ashwani Sharma and Dushyant
Dadhwal, Advocates.

Deepak Gupta, ACJ.

By this judgment, we are disposing of the aforesaid two writ petitions filed by the State since the following common question arises for decision in the present case:-

Whether the services rendered by the respondent(s) in private colleges prior to their induction in Government service can be counted for the purpose of calculating 8 years of continuous service for grant of senior scale to the respondents ?

The facts of the two cases are as follows:-

1. CWP No. 580 of 2001

In this case, the respondent was originally working as lecturer in English in Amar Nath Smarak Mahavidyalaya, Jogindernagar, District Mandi. She was appointed as lecturer on 24.7.1989. The said college was taken-over by the State Government with effect from 14.5.1994. The services of the respondent were taken-over w.e.f. 4.5.1994 by the Government. The stand of the respondent is that the period of service rendered by her in the private college before it was taken over by the Government has to be counted while reckoning the period of 8 years of continuous service. This Original Application (OA) has been allowed and therefore, the present writ petition.

2. CWP No. 608 of 2001.

The respondent was appointed as lecturer on regular basis in the Department of English in Maharaj Lakshman Sen Memorial College, Sundernagar. This college was affiliated to the H.P. University. The respondent was appointed in the pay scale of Rs. 2200-4000. She joined this college on 10.7.1989. While the respondent was working as lecturer in the aforesaid college, she applied for her selection as lecturer in the Department of English. Admittedly, selection to the said post is done by the H.P. Public Service (for short: HPPSC). After the respondent was selected by

the HPPSC, she was appointed as lecturer and posted in the Government College (Girls), Shimla. The appointment letter in favour of the respondent was issued on 7.8.1993. On her selection by the HPPSC, the respondent resigned from Maharaja Lakshman Sen Memorial College, Sundernagar and was relieved from the said college on 11.8.1993 and joined the Government College (Girls), Shimla on 12.8.1993. Thereafter, she was posted on various other colleges. The respondent No.1 filed the Original Application being 2525 of 1998 before the learned Tribunal praying that the service rendered by her in the private college from 10.7.1989 till 11.8.1993 be counted while reckoning the period of 8 years for her placement in the senior scale.

Both the Original Applications were allowed by the learned Tribunal basically relying upon the instructions of the University Grants Commission (for short: UGC) dated 27.11.1990. Aggrieved against the said orders, the State has filed the present writ petitions.

It would be pertinent to mention that the State of H.P. pursuant to the recommendations of the UGC and on the basis of the Punjab pattern was pleased to revise the pay scale of the college lecturers w.e.f. 16.11.1989. The senior scale of Rs. 3000-100-125-5000 was provided to the lecturers which was not existing prior to the said date. The notification provided that the lecturer and other staff working in affiliated non-governmental colleges would also be given the pay scales as approved by the Government for the corresponding categories of the Government colleges. Condition No.5 forming part of

Annexure-A to the said notification provides that college lecturers would be eligible for grant of senior scale of Rs. 3000-5000 on completion of 8 years of service after regular appointment.

The learned Tribunal has basically relied upon the memo dated 27.11.1990 which is a clarificatory memo issued by the UGC. Paras 1 and 2 of the said memo read as follows:-

"1. Previous service without any break as a Lecturer of equivalent in a university, college, national laboratory or other scientific organizations (CSIR, ICAR, DRDO, UGC etc) and as a UGC Research Scientist should be counted for placement of lecturers in Senior Scale/Selection Grade provided that:-

- a) the post was in an equivalent grade/scale of pay as the posts of a Lecturer;
- b) the qualifications for the post were not lower than the qualifications prescribed by UGC for the post of Lecturer;
- c) the Lecturers concerned possessed the minimum qualification prescribed by UGC for appointment as Lecturers;
- d) the post was filled in accordance with the prescribed selection procedure as laid down by the university/State Government;
- e) the appointment was not ad hoc or in a leave vacancy of less than one year duration;

- 2. No distinction should be made with reference to the nature of management of the institution where previous service was rendered (Private/local body/Government) if the above criteria are satisfied."

The learned Tribunal held that since the UGC has laid down that no distinction would be made with reference to the

management of the institution where the previous service was rendered, therefore, the private respondents were entitled to count their services rendered in the private institutions.

We have heard Mr. M.S. Chandel, learned Advocate General for the State- petitioner and Mr. Ashwani Kumar Sharma and Mr. Dushyant Dadhwal, learned counsel for the respondents.

The main contention of the learned Advocate General is that the recommendations/memos of the UGC are not ipso facto applicable to the employees in the State. The State must adopt or accept the recommendations of the UGC. He submits that though the provision of pay scale as recommended by the UGC was accepted by the State Government and a specific notification in this behalf was issued on 16.11.1989, the subsequent memo of the UGC that while counting the period of 8 years, no distinction should be made between service rendered in privately managed institutions or Government run institutions has not been accepted by the State Government.

On the other hand, learned counsel for the respondents submit that the directions of the UGC are applicable to them also and even otherwise no distinction should be made between the service rendered by the duly qualified lecturers who have been inducted as per norms laid down by the University in the private institutions and those selected by the H.P.PSC in the Government colleges.

We have given our careful consideration to the entire case and also gone through the records and various decisions cited before us.

Reliance has been placed by the private respondents on **Sharadendu Bhushan v. Nagpur University, Nagpur & Ors**, 1988 SC 335. In that case the Nagpur University as well as High Court of Bombay had not accepted the plea of the employee that the service rendered by him in a college affiliated to the Calcutta University should be counted while reckoning his service of 5 years. The apex Court in that case held that in terms of the criterion laid down by the University itself, a teacher is entitled to the benefit of the higher grade if he has the teaching experience of not less than five years. The decision of the Bombay High Court was set aside and the petitioner was held entitled to this benefit. The relevant clause in the said case reads as follows:-

“Experience of university teaching upto degree classes for a period of five years”.

The apex Court held that it was not necessary that the entire length of service should be in the Nagpur University itself. In the present case, the relevant clause is that the lecturer should have “completed 8 years of service after regular appointment.” We are of the considered view that the words ‘regular appointment’ in the present case must mean a regular appointment in Government service and not regular appointment in a private institution.

The respondent have relied upon the decisions of the apex Court in **University of Delhi v. Raj Singh and others**, 1995 SC 336, **Bhagalpur University Research Scholars Association and others v. State of Bihar and others**, 1994, LAB. I.C. 2343 and **Ramswaroop Meena and others v. University of Rajasthan and others**, AIR 1997 Raj. 35.

We are of the view that these judgments are not applicable to the facts of the present case. The law laid down in these judgments is that it is the UGC which alone can lay down the qualifications/guidelines required by a person to be appointed to the teaching staff of the university or institution affiliated to it. No doubt, under entry 66 of List I of Schedule VII to the Constitution of India, it is the Central Government which has the power to lay down the standards of higher education. However, this does not give power to the Central government to lay down the pay scales. The UGC has the power to lay down standards of qualification which should be held by the holder of any post in the university but it cannot lay down the pay scales. The recommendations which the UGC makes with regard to the pay scales are only recommendatory in nature. If the State Government accepts the recommendations of the UGC, then they become binding, but it is for the State Government to consider whether to adopt any particular recommendations of the UGC or not. In the present case the State accepted the recommendations of the UGC with regard to the pay scales. However, no material has been placed before us to show that any notification was issued accepting the

recommendations/guidelines laid down by the University in the memo dated 27.11.1990. In fact, a perusal of this letter which has been annexed does not even show that it was ever issued to the Government of H.P. There is no material before us to show that the recommendations of the UGC were ever accepted by the State.

It has also been argued on behalf of the petitioner that no distinction can be made between the service rendered in private institutions and the service rendered in Government colleges and the distinction if made is arbitrary and illegal. This argument proceeds on the premise that qualifications for employment both in private and Government colleges affiliated to the university are the same and the same pay scale is granted to both.

It may be true that the qualifications and the scales of pay both in private colleges and government colleges for the lecturers are the same. However, we cannot lose sight of the fact that in India every person hankers for a government job. Lecturers in government colleges are appointed through the HPPSC. The selection is on a much wider scale and much more competitive. The competition for jobs in privately managed institutions is not to the same extent. Both the quantity and quality of candidates applying for government jobs are much higher than for privately run educational institutions. It may be that the respondents or other candidates like them who were working in privately managed educational institutions may have also applied for a government job through the HPPSC. The

selection by the HPPSC is made on merit and meritorious candidates are selected. Persons who were serving in privately managed institutions may or may not be selected. Supposing a person with less or no experience is selected in a prior selection and a person having longer service in a private institution is selected in a later selection. After entering service, at a later stage, the persons like respondents cannot claim the benefit of the service rendered in the privately managed institutions as this will virtually amount to giving them a higher scale of pay than the persons who had been selected prior to them in a selection carried out by the HPPSC. Therefore, Article 14 is not attracted.

The State as already observed above has adopted the rules which provide that 8 years of service after regular appointment is to be considered while granting senior scale. In our considered view the words "regular appointment" must relate to the appointment in the Government service and not the appointment in privately managed institutions.

In view of the above discussion, we are of the view that the service rendered by the respondents in privately managed institutions prior to their induction in government service cannot be counted for the purpose of calculating 8 years of service for grant of senior scale. The orders of the learned Tribunal in OA No.2525 of 1998 dated 14.12.2000 and OA No.2395 of 1999 dated 15.12.2000 are consequently set aside and the Original Applications filed by the respondents are dismissed. No costs.

(Deepak Gupta), ACJ.

July _____, 2007.
s.

(V.K.Ahuja), J.

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For the Respondent(s): Mr. Ashwani Sharma Advocate.

Deepak Gupta, ACJ.

For judgment, see judgment of even date rendered
in CWP No.580 of 2001, titled **State of H.P** versus **Seema
Bawa.**

(Deepak Gupta), ACJ

July 5, 2007

(V.K.Ahuja), J.

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